

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MONTGOMERY COUNTY, MARYLAND

Plaintiff

v.

ALL STATE PLUMBING,  
HEATING & COOLING, INC.  
3201 Baltimore Boulevard, Suite A  
Finksburg, Maryland, 21048

&

WAYNE E. GARRITY, SR.  
3202 Shiloh Road  
Hampstead, Maryland 21074

Defendants

Civil Action No.

V342499

COMPLAINT

Montgomery County, Maryland (County), by and through its undersigned attorneys, hereby files this Complaint and sues Defendant All State Heating & Cooling, Inc. (All State) and Defendant Wayne E. Garrity, Sr. (Garrity) for violations of Chapter 11 of the Montgomery County Code, 1984, as amended, and states as follows:

**Nature of the Action**

1. This action seeks redress on behalf of the consumers of Montgomery County, Maryland, for Defendant's unlawful actions, including deceptive and unconscionable trade practices, against Montgomery County consumers, in violation of Chapter 11 of the Montgomery County Code.

2. As more specifically alleged in this Complaint, the Defendants have directly charged consumers in order to obtain a permit and an inspection from the

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Clerk of the Circuit Court  
Montgomery County, Md.

Washington Suburban Sanitation Commission (WSSC) prior to Defendants' installation of an electric or gas water heater for the consumer. Defendants then failed to obtain the permits the consumers were charged for, thereby deceiving the consumers.

3. In this case, the Plaintiff seeks restitution and punitive damages on behalf of Montgomery County consumers, civil penalties, reimbursement of the costs of Montgomery County, attorney's fees, and injunctive relief, as more thoroughly detailed and alleged in this Complaint.

#### **Parties**

4. Plaintiff is a public body, corporate and politic, which is authorized by the Maryland Constitution and laws of the State of Maryland to uphold and enforce the laws and ordinances of Montgomery County, Maryland, including those found within Chapter 11, Consumer Protection, of the Montgomery County Code. The County enforces Chapter 11 through its lawful agent, the Office of Consumer Protection.

5. The Montgomery County Office of Consumer Protection (OCP) is an administrative agency of the Plaintiff, created by Section 11-2 of the County Code. OCP has the power, under § 11-2, to receive and investigate complaints and to conduct such investigations as it deems necessary to protect the consumers of Montgomery County, Maryland. OCP is responsible for enforcement of Chapter 11 of the Montgomery County Code.

6. Defendant All State is a Maryland corporation with its principal office at 3201 Baltimore Boulevard, Suite A, Finksburg, Maryland , 21048. Defendant All State is registered in Maryland as a domestic corporation with the identification number D11313293. Defendant All State does business throughout the State of Maryland,

including Montgomery County. Defendant All State is in the business of providing residential installation and repair of heating and air conditioning ventilation systems to consumers in Montgomery County.

7. Defendant Garrity is a Maryland resident who resides at 3202 Shiloh Road, Hampstead, Maryland 21074. Defendant Garrity is licensed by WSSC as a master plumber to perform plumbing repairs in Montgomery County under the WSSC license number 2473. Through Defendant Garrity's license, Defendant All State is able to engage in plumbing and gas work in Montgomery County. Defendant All State acts as an agent to Defendant Garrity, under Defendant Garrity's license, to conduct plumbing repairs in Montgomery County. At all times referred to in this Complaint, Defendant Garrity has been the resident agent and an officer and manager of Defendant All State, and has possessed and exercised the authority to control the policies and practices of Defendant All State.

### **Jurisdiction**

8. The Defendants have at all times referred to in this Complaint transacted business in Montgomery County. A "merchant" is defined in § 11-1 of the Montgomery County Code as "[a]ny person who offers or makes available to consumers, either directly or indirectly, consumer goods or services." Defendant All State is a merchant because Defendant All State is in the business of offering and making available residential installation and repair of heating and air conditioning ventilation systems, a consumer good or service, to consumers in Montgomery County. Defendant Garrity is a merchant because Defendant Garrity, as an agent for Defendant All State, holds the master plumber license through which Defendant All State is able to act as a merchant

throughout Montgomery County. Defendant Garrity also exercises authority and control over Defendant All State as an officer and manager.

9 This Court has jurisdiction over the subject matter of this Complaint pursuant to the Annotated Code of Maryland, Courts and Judicial Proceedings Article, § 1-501.

10. This Court has personal jurisdiction over Defendants pursuant to the Annotated Code of Maryland, Courts and Judicial Proceedings Article, § 6-102. At all times relevant to the matters raised in this Complaint, each of the Defendants were domiciled in Maryland and maintained their principal place of business in Maryland, and Defendant All State was organized in Maryland.

11. This Court also has personal jurisdiction over Defendants pursuant to the Annotated Code of Maryland, Courts and Judicial Proceedings Article, § 6-103. At all times relevant to the matters raised in this Complaint, each of the Defendants regularly transacted business in Maryland, contracted to supply goods and services in Maryland, regularly solicited business in Maryland, engaged in a persistent course of conduct in Maryland, and caused tortious injury in Maryland by acts and/or omissions within Maryland.

12. This Court has venue over the Defendants pursuant to the Annotated Code of Maryland, Courts and Judicial Proceedings Article, § 6-201, which provides, among other things, that a civil action be brought in a county where the defendant carries on regular business or habitually engages in a vocation. At all times relevant to the matters raised in the Complaint, Defendants have engaged in the offer and sale of consumer goods and services in Montgomery County, and have regularly carried on business in

Montgomery County.

## COUNT I

### (Deceptive Misrepresentations)

13. Plaintiff incorporates and alleges again, as though fully set forth, the facts stated in all preceding paragraphs of the Complaint.

14. Defendant All State is an independent plumbing, heating, and cooling repair firm that operates within Montgomery County. Defendant All State also operates as a service provider for a national home warranty company, American Home Shield, for plumbing, heating, and cooling repairs and installations.

15. Defendant Garrity is and was at all times relevant to the issues raised in this Complaint the resident agent and an officer of Defendant All State. WSSC licenses individuals, not corporations, as master plumbers, and Defendant Garrity is licensed as a master plumber to perform plumbing repairs in Montgomery County on behalf of Defendant All State.

16. Defendant All State has offered and sold to consumers in Montgomery County the installation and repair of gas and electric water heaters both independently and as a service provider for American Home Shield. These repairs are for consumers personal, household, or family purposes, and are therefore "consumer goods or services" as defined in the Montgomery County Code, § 11-1.

17. Over the course of the past two years, Defendant All State replaced over 100 gas or electric water heaters in Montgomery County.

18. Prior to replacing a gas water heater in Montgomery County, WSSC requires whoever is conducting the repair, in this case Defendant All State, to obtain a

permit from WSSC. The permit then initiates WSSC's inspection of the gas water heater. WSSC charges \$50 for this permit.

19. WSSC does not require a permit to replace an electric water heater.

20. Defendant All State charged each Montgomery County consumer a fee of between \$100 and \$150 to obtain a permit from WSSC in order to install each gas or electric water heater for the consumer.

21. Defendant All State directly invoiced each Montgomery County consumer for repairs made to the consumer's water heater. This invoice from Defendant All State included an itemized fee for a permit from WSSC. The Montgomery County consumers paid the invoice, including the permit fee, directly to Defendant All State. (Exhibit A, Affidavits from Montgomery County consumers)

22. Defendants did not obtain the required permit from WSSC to replace many of the Montgomery County consumers' gas water heaters. (Exhibit B, Affidavit from WSSC's Custodian of Records)

23. Defendants did not need to obtain a permit, but charged Montgomery County consumers for a permit anyway, to replace many of the Montgomery County consumers' electric water heaters.

24. Following an investigation by OCP into Defendants' actions, Plaintiff provided Defendants a draft Settlement Agreement in June 2010 in an attempt to conciliate the matter. Defendants rejected this proposed agreement.

25. By charging for permits that were not obtained or that were not necessary, Defendants have engaged in a pattern and practice of deceptive misrepresentation in violation of the Montgomery County Code, §§ 11-4(a), (e), (f), (k), (n), and (o).

26. Defendant Garrity has continuously and regularly supervised, controlled, directed, or formulated the policies, management operations, and activities of Defendant All State. Defendant Garrity was responsible for creating and implementing the unfair or deceptive policies and practices of Defendant All State that are alleged herein. Defendant Garrity knew or should have known of these unfair or deceptive policies and practices and had the power to stop them, but instead promoted their use. Such actions have been taken, at least in part, for Defendant Garrity's personal benefit.

27. Under § 11-11 of the Montgomery County Code, OCP may bring an action in any court with jurisdiction to recover a civil penalty, enjoin any violation of this Chapter, or enforce any order, decision, summons or subpoena issued under this Chapter. In any action OCP brings, OCP may seek damages, restitution, the posting of a bond, or any other available legal or equitable relief.

## **COUNT II**

### **(Deceptive and Unconscionable Billing Practices)**

28. Plaintiff incorporates and alleges again, as though fully set forth, the facts stated in all preceding paragraphs of the Complaint.

29. Whether a consumer is charged for goods or services that have actually been performed is a material fact in a consumer transaction.

30. Defendants' charged consumers the cost of a permit and inspection from WSSC, plus an additional \$50 - \$100 fee, to obtain permits from WSSC. These permits were either not obtained by Defendants but were required, or were not obtained and were not required, in order to repair the consumer's water heater.

31. Therefore, Defendants engaged in deceptive and unconscionable trade

practices in violation of the Montgomery County Code, §§ 11-4(e), (f), (n), and (o).

### **COUNT III**

#### **(Deceptive and Unconscionable Trade Practices In Charging For Unnecessary**

#### **Work Or Work Never Performed)**

32. Plaintiff incorporates and alleges again, as though fully set forth, the facts stated in all preceding paragraphs of the Complaint.

33. The Defendants have charged consumers for permits that the Defendants did not obtain.

34. The Defendants have charged consumers for permits that the consumers did not need and that the Defendants did not obtain.

35. Whether a permit charged for was, in fact, obtained, or whether a permit was, in fact, necessary and obtained, is a material fact in a consumer transaction.

36. Therefore, Defendants engaged in deceptive and unconscionable trade practices in violation of the Montgomery County Code, §§ 11-4(e), (f), (n), and (o).

### **COUNT IV**

#### **(Failure to Obtain Permits and Approvals)**

37. Plaintiff incorporates and alleges again, as though fully set forth, the facts stated in all preceding paragraphs of the Complaint.

38. Defendants represented to consumers, expressly and by implication, that Defendants would obtain all permits and approvals required by WSSC for work Defendants performed for Montgomery County consumers.

39. Defendants failed to obtain the permits necessary to perform certain repairs and to obtain WSSC approval to complete the repairs.



40. Whether a repair job has been properly permitted and approved is a material fact in a consumer transaction.

41. Therefore, Defendants engaged in deceptive trade practices in violation of the Montgomery County Code, §§ 11-4(e), (f), (n), and (o).

## **COUNT V**

### **(Negligent Misrepresentation)**

42. Plaintiff incorporates and alleges again, as though fully set forth, the facts stated in all preceding paragraphs of the Complaint.

43. Defendants' deceptive practices, as outlined in this Complaint, constitute negligent misrepresentation because they have involved negligent and false representations of material facts, which Defendants knew or should have known were false, or which were made with negligent disregard for the truth.

44. Defendants knew and intended that their conduct, as set forth in this Complaint, would be relied upon by consumers and cause those consumers injury.

45. Numerous Montgomery County consumers have relied upon Defendants' fraudulent and false representations and have suffered damages in that these consumers have been deceived into purchasing goods and services from Defendants which Defendants did not perform and which did not comply with WSSC's permitting and inspection process.

## **COUNT VI**

### **(Defendants Failure to Comply with OCA's Administrative Subpoenas)**

46. Plaintiff incorporates and alleges again, as though fully set forth, the facts stated in all proceeding paragraphs of the Complaint.

47. On May 27, 2010, OCP issued an administrative subpoena to Defendants requesting Defendants provide OCP with a copy of all Defendants service receipts for the installation of all gas and electric water heaters in Montgomery County from January 1, 2009 through May 15, 2010. (Exhibit C) OCP has the authority to issue administrative subpoenas under § 11-2 of the Montgomery County Code.

48. Defendants responded to OCP's administrative subpoena with ten service receipts. OCP has identified that over 100 Montgomery County consumers had replaced their gas or electric water heaters through Defendant All State since January 2009.

49. Defendants have failed to provide all service receipts for the periods requested in the administrative subpoena.

50. By failing to fully comply with the OCP's administrative subpoena, Defendants' violated the Montgomery County Code, § 11-9, which permits the County to institute litigation to enforce an OCP subpoena.

51. This Court may grant injunctive relief or other appropriate relief to enforce OCP's subpoena.

### **PRAYERS FOR RELIEF**

Wherefore, the Plaintiff Requests that:

- A. Defendants be found to have violated Chapter 11 of the Montgomery County Code;
- B. Defendant be found to have engaged in negligent misrepresentation;
- C. Defendants be enjoined from continuing their wrongful, fraudulent, deceptive, and unconscionable practices, as outlined in this Complaint;
- D. Defendants be ordered to comply fully with OCP's administrative

subpoena and produce all documents requested in the subpoena;

E. Defendants be ordered to make restitution to all consumers who were charged for Defendants to obtain a permit from WSSC when Defendants did not obtain this permit or Defendants did not need to obtain this permit;

F. The Court impose civil penalties on Defendants of \$1,000 for each and every act, practice, or transaction constituting a violation of the Montgomery County Code;

G. The Court award Plaintiff reasonable attorney's fees;

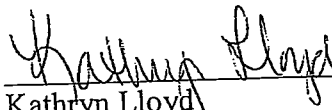
E. The Court award the OCP investigative costs incurred in this matter;

F. The Court award Plaintiff such other and further relief, including punitive damages, as it deems necessary and proper.

MARC P. HANSEN  
ACTING COUNTY ATTORNEY



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